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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/882,825 | 06/16/2001 | Dwight L. Adamic | 0247.00006 | 9220 |

7590 10/20/2003

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EXAMINER

BATSON, VICTOR D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3671

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/882,825

Applicant(s)

ADAMIC ET AL.

Examiner

Victor Batson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/10/03 & 10/1/03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 9, 14 and 16-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 and 14 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 16-19, 23, 24, 27 and 29-31 is/are rejected.
- 7) ☒ Claim(s) 20-22, 25 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Objections

Claim 20 is objected to because of the following informalities: Claim 20 improperly depends from canceled claim 5. For examination purposes, it has been assumed that claim 20 should depend from claim 1. Applicant however, needs to amend the dependency of claim 20 so that it depends from an appropriate claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,9,16-19,23,24,26,27,29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Small (2,688,475) in view of Olson, Jr. (6,406,236).

Small discloses an assembly having all of applicant's claimed structure including a wear member 13, support structure 11, first passage 20, second passage 18, pin retainer 25 and pin means 22 which extends through the first passage and into the second passage for locking the wear member to the support structure and bearing substantially all of the wear member-removal compressive forces during use of the wear member as shown in figures 1,3,5. The examiner notes Small discloses retainer 25 as being welded in the aperture, which would cause it to be held in a non-rotatable position. The examiner notes that figure 1 shows the first passage forward of the

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second passage. Given the structure of Small, the method steps would be inherently performed. Small, however, lacks specifying that the retainer is resilient.

Olson Jr., teaches that it is known in the fastener art, for retainers made from a malleable material (col 10) to be resilient. Since the device of Olson Jr., is disclosed as having spring legs, the device is clearly resilient. It is advantageous to form a retainer from a resilient material to reduce the chance of the retainer breaking and to enhance the gripping ability of the retainer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the device of Small, by making the retainer resilient as taught by Olson Jr., to enhance its grip and reduce the chance of breaking the retainer.

Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the retainer of Small out of a resilient material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

Claims 20,21,22,25,28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2,14 are allowed.

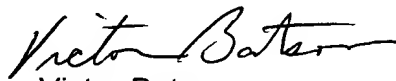
Response to Arguments

Applicant's arguments filed 9/26/03 have been fully considered but they are not persuasive. Applicant argues that since the retainer 25 of Small (2,688,475) is disclosed as being a malleable metal washer, it does not meet the limitation of resilient. The examiner does not agree that a malleable material cannot be resilient. It is the examiner's position that a malleable material, including metal or steel can still be resilient if they are thin enough. For example, springs and lock-washers can be formed from malleable steel, and yet they are still resilient.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (703) 305-6356. The examiner can normally be reached on Monday through Friday (except Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1115.


Victor Batson
Primary Examiner
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